

STATE OF MISSOURI)
)
COUNTY OF PETTIS)

I, SUSAN SADLER, CLERK OF THE CIRCUIT COURT WITHIN AND FOR THE COUNTY OF PETTIS AND STATE OF MISSOURI, HEREBY CERTIFY THE FOREGOING TO BE A FULL, TRUE AND CORRECT COPY OF THE FOLLOWING:


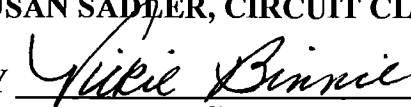
CASE #: 10PT-AC00238 CASE CAPTION: STEPHEN KELLY ETAL V UTC FIRE & SECURITY

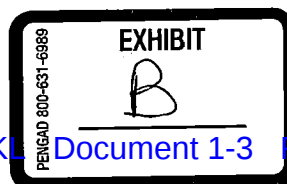
ON THIS 11H DAY OF JANUARY, 2011, AS FULLY AS THE SAME APPEARS OF RECORD IN MY OFFICE.

1. PETITION
2. SUMMONS ISSUED TO UTC FIRE & SECURITY
3. SUMMONS ISSUED TO KIDDE-FENWAL INC
4. ENTRY OF APPEARANCE – DANIEL DEFEO
5. FIRST AMENDED PETITION
6. SUMMONS ISSUED TO UTC FIRE & SECURITY
7. SUMMONS ISSUED TO KIDDE-FENWAL INC
8. SUMMONS ISSUED TO UNDERWRITERS LABORATORIES INC
9. SUMMONS RETURN FOR UTC FIRE & SECURITY 11/19/10
10. SUMMONS RETURN FOR KIDDE-FENWAL INC 11/19/10
11. SUMMONS RETURN FOR KIDDE-FENWAL, INC 12/6/10
12. SUMMONS RETURN FOR UTC FIRE & SECURITY 12/6/10
13. ANSWER FILED BY DANIEL DEFEO FOR HAROLD PRESTON
14. CROSS CLAIM FILED BY DANIEL DEFEO FOR HAROLD PRESTON
15. SUMMONS RETURN FOR UNDERWRITERS LABORATORIES INC 1/3/11
16. DOCKET SHEET

WITNESS MY HAND AS CLERK AND HERETO AFFIXED THE OFFICIAL SEAL OF SAID COURT. DONE AT MY OFFICE IN SEDALIA, MISSOURI THIS DATE.

SEAL


SUSAN SADLER, CIRCUIT CLERK
BY 
DEPUTY CLERK



10PT-CC00238 STEPHEN KELLY ETAL V UTC FIRE & SEC Security Level: 1 Public
AMER COR ETAL

Case Type: CC Pers Injury-Prod Liab **Case Filing Date:** 05-Nov-2010
Status: Pet Filed in Circuit Ct
Disposition: **Disposition Date:**

	<u>Release/Status</u>	<u>Reason</u>
	<u>Change Date</u>	
Judge	ROBERT L. KOFFMAN (30200)	
Plaintiff	STEPHEN KELLY (KELS*8883)	
Attorney for Plaintiff	ADAM WESLEY GRAVES(55190)	
Plaintiff	CHARLOTTE KELLY (KELC*7069)	
Attorney for Plaintiff	ADAM WESLEY GRAVES(55190)	
Defendant	UTC FIRE & SECURITY AMERICAS CORPORATION INC (UTCFIRE)	
	KIDDE-FENWAL INC (KIDDEFENW)	
	HAROLD PRESTON (@42498)	
Attorney for Defendant	DANIEL TIMOTHY DEFEO(35161)	
Defendant	UNDERWRITERS LABORATORIES INC (UNDERWRIT)	

<u>Filing Date</u>	<u>Description</u>
04-Nov-2010	Judge Assigned Attorney requests no service on Harold Preston. No summons issued at this time for UTC Fire or Kidde-Fenwal as attorney stated they would send a postage paid envelope made out to St Louis Sheriff for service. (7) Pet Filed in Circuit Ct Confid Filing Info Sheet Filed
08-Nov-2010	Summons Issued-Circuit Document ID: 10-SMCC-723, for UTC FIRE & SECURITY AMERICAS CORPORATION INC. Summons together with Petition and attorney's check to St. Louis County Sheriff. Service/Attempt Date: 15-Nov-2010 Summons Issued-Circuit Document ID: 10-SMCC-724, for KIDDE-FENWAL INC. Summons together with Petition and attorney's check to St. Louis County Sheriff. Service/Attempt Date: 15-Nov-2010
15-Nov-2010	Entry of Appearance Filed Filed By: DANIEL T DEFEO
18-Nov-2010	Amended Motion/Petition Filed FIRST AMENDED PETITION /3 Filed By: ADAM W GRAVES Summons Issued-Circuit Document ID: 10-SMCC-755, for UTC FIRE & SECURITY AMERICAS CORPORATION INC. Summons together with copy of First Amended Petition and Check #16994 sent to St Louis County Sheriff for service. /3 Service/Attempt Date: 29-Nov-2010

Case continued from previous page.

10PT-CC00238	STEPHEN KELLY ETAL V UTC FIRE & SEC AMER COR ETAL	Security Level: 1 Public
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18-Nov-2010 **Summons Issued-Circuit**
Document ID: 10-SMCC-756, for KIDDE-FENWAL INC. Summons together with copy of First Amended Petition and Check #16995 sent to St Louis County Sheriff for service. /3
Service/Attempt Date: 29-Nov-2010

Summons Issued-Circuit
Document ID: 10-SMCC-757, for UNDERWRITERS LABORATORIES INC. Summons together with copy of First Amended Petition and Check #16992 sent to Cole County Sheriff for service. /3
Service/Attempt Date: 15-Dec-2010

19-Nov-2010 **Summons Personally Served**
Document ID - 10-SMCC-723; Served To - UTC FIRE & SECURITY AMERICAS CORPORATION INC; Server - SO ST LOUIS COUNTY-CLAYTON; Served Date - 15-NOV-10; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

Summons Personally Served
Document ID - 10-SMCC-724; Served To - KIDDE-FENWAL INC; Server - SO ST LOUIS COUNTY-CLAYTON; Served Date - 15-NOV-10; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

06-Dec-2010 **Agent Served**
Document ID - 10-SMCC-756; Served To - KIDDE-FENWAL INC; Server - SO ST LOUIS COUNTY-CLAYTON; Served Date - 29-NOV-10; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

Agent Served
Document ID - 10-SMCC-755; Served To - UTC FIRE & SECURITY AMERICAS CORPORATION INC; Server - SO ST LOUIS COUNTY-CLAYTON; Served Date - 29-NOV-10; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

20-Dec-2010 **Answer Filed**
Filed By: DANIEL T DEFE0

Cross Claim Filed
Filed By: DANIEL T DEFE0

03-Jan-2011 **Agent Served**
Document ID - 10-SMCC-757; Served To - UNDERWRITERS LABORATORIES INC; Server - SO COLE COUNTY-JEFFERSON CITY; Served Date - 15-DEC-10; Served Time - 09:05:00; Service Type - Sheriff Department; Reason Description - Served

SUSAN SADLER
PETTIS COUNTY CIRCUIT CLERK

415 SOUTH OHIO, SUITE 324
SEDALIA, MISSOURI 65301

PHONE: 660-826-5000 EXT. 926
FAX: 660-826-4520

FACSIMILE TRANSMITTAL SHEET

TO: Edward White (X33558)	FROM: Alecia Farkas, Deputy Clerk (660) 826-5000 (x 455)
COMPANY:	DATE: 1/6/2011
FAX NUMBER: (816) 421-5547	TOTAL NO. OF PAGES INCLUDING COVER: 11
RE: Stephen Kelly et al. v. UTC Fire& Security Americas Corp. et al.	CASE NO.: 10PT-CC00238

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Following please find the First Amended Petition you requested. The copy cost for sending documents via facsimile is \$2.00 for the first page and \$1.00 for each additional page (excluding the cover page). Please remit \$11.00 to the above address for the cost of the petition.

Thank you. Please let us know if you need anything additional.

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the above-named sender immediately by telephone, and return the original message to the sender at the above address via the U.S. Postal Service. Thank you.

SUSAN SADLER
PETTIS COUNTY CIRCUIT CLERK

415 SOUTH OHIO, SUITE 324
SEDALIA, MISSOURI 65301

PHONE: 660-826-5000 EXT. 926
FAX: 660-826-4520

FACSIMILE TRANSMITTAL SHEET

TO: Edward White (x33558)	FROM: Alecia Farkas, Deputy Clerk (660) 826-5000 (x 455)
COMPANY: Attorney at Law	DATE: 1/6/2011
FAX NUMBER: (816) 421-5547	TOTAL NO. OF PAGES INCLUDING COVER: 10
RE: Stephen Kelly et al. v. UTC Fire & Security Americas Corp et al.	CASE NO.: 10PT-CC00238

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Following please find the Petition you requested. The copy cost for sending documents via facsimile is \$2.00 for the first page and \$1.00 for each additional page (excluding the cover page). Please remit \$10.00 to the above address for the cost of the petition.

Thank you. Please let us know if you need anything additional.

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the above-named sender immediately by telephone, and return the original message to the sender at the above address via the U.S. Postal Service. Thank you.



IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

Return

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: <i>Return Address</i> 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: UNDERWRITERS LABORATORIES INC
o/o National Registered Agents, Reg Agt.
 300-B EAST HIGH STREET
 JEFFERSON CITY, MO 65101

COURT SEAL OF



PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-18-10
Date

Further Information:

Susan Sadler by Julie Bennie
Clerk
RECEIVED

Sheriff's or Server's Return

DEC 09 2010

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.
☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

☒ other *Served Underwriters Laboratories Inc % Nat Reg Agt. J. Kavan, designee*
 Served at *300 B East High St. JC MO 65101* (address)
 in *Glk* (County/City of St. Louis), MO, on *12-15-2010* (date) at *0905* (time).
Greg B. White Printed Name of Sheriff or Server
John A. Kavan Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date)

My commission expires: _____

Date

Notary Public

(Seal)

Sheriff's Fees

Summons \$ *20-*
 Non Est \$ _____
 Sheriff's Deputy Salary \$ _____
 Supplemental Surcharge \$ *10.00*
 Mileage \$ *30-* (_____ miles @ \$. _____ per mile)
 Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

COLE COUNTY SHERIFF'S OFFICE

16992 30

IN THE CIRCUIT COURT OF PETTIS COUNTY, MISSOURI

FILED
DEC 20 2010
SUSAN SADLER
CLERK CIRCUIT COURT

STEPHEN KELLY, et. al,

Plaintiffs

vs.

UTC Fire & Security Americas Corporation,
Inc., et. al,

Defendants.

)
)
)
)
)
)
)
)
)
)

Case No.: 10PT-CC0238

ANSWER, AFFIRMATIVE DEFENSES AND CROSS-CLAIMS OF DEFENDANT
HAROLD PRESTON

COMES NOW Defendant, Harold Preston, through his counsel, and for his answer, and affirmative defenses to Plaintiffs' Petition states as follows:

1. Admit.

2. Defendant has insufficient information to admit or deny the allegation, and therefore, denies.

3. Admit.

4. Admit.

5. Admit.

6. - 14. The allegations are not directed to Defendant, Harold Preston, but after investigation, Defendant believes the allegations to be true and thus, admits.

15. Admit

16. Defendant incorporates by reference his answers to paragraphs 1-15, above.

17. Admit.

18. Admit.

19. Admit.

20. Admit.

21. Admit.

COUNT I - NEGLIGENCE
AGAINST DEFENDANTS KIDDE, UTC AND UL

22. Defendant incorporates by reference his answers to paragraphs 1-21, above.

23 – 27. The allegations are not directed to Defendant, Harold Preston, but after investigation, Defendant believes the allegations to be true and thus, admits.

COUNT II - STRICT LIABILITY
AGAINST DEFENDANTS KIDDE, UTC AND UL

28. Defendant incorporates by reference his answers to paragraphs 1-27, above.

29 – 34. The allegations are not directed to Defendant, Harold Preston, but after investigation, Defendant believes the allegations to be true and thus, admits.

COUNT III - NEGLIGENCE
AGAINST DEFENDANT HAROLD PRESTON

35. Defendant incorporates by reference his answers to paragraphs 1-34, above.

36. Defendant admits that he installed the locks on Nicole Ortner's home, the remainder of the paragraph is denied.

37. The allegation contains a legal conclusion and no response is necessary. To the extent that a response is required, Defendant denies.

38. Deny.

39. Deny.

40. Deny.

COUNT IV – LOSS OF SERVICES, COMPANIONSHIP, COMFORT,
INSTRUCTION, GUIDANCE, COUNSEL AND TRAINING
AGAINST ALL DEFENDANTS

41. Defendant incorporates by reference his answers to paragraphs 1-40, above.

42. To the extent that this allegation applies to Defendant Harold Preston, it is denied.

43. Defendant denies that he contributed to the wrongful death of the decedent. The remainder of the paragraph is admitted.

WHEREFORE, Defendant, having fully answered Plaintiffs' Petition for Damages, prays that the Court enter judgment in his favor and against Plaintiffs for the costs of this action, and for such other relief that the Court deems appropriate and just.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs' Count III fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs' claims against Defendant Harold Preston are barred by the doctrine of *laches*.

Third Affirmative Defense

Plaintiffs' injuries were caused by the negligent conduct of parties other than Harold Preston, and for whose conduct, Harold Preston is not responsible. Such conduct was a superseding and/or intervening cause of the accident.

Fourth Affirmative Defense

The locks installed by Harold Preston were an open and obvious risk, of which Plaintiffs' decedent should have been aware, and/or which she accepted, consented to and assumed.

CROSS-CLAIMS OF HAROLD PRESTON

COMES NOW Defendant, Harold Preston, Individually, and as the Natural Father of Stephen and Nicholas Preston, deceased, and for his cross claims against Defendants UTC Fire & Security Americas Corporation, Inc., Kidde-Fenwal, Inc., and Underwriters Laboratories, Inc., alleges and avers as follows:

Jurisdiction and Venue

1. Defendant Harold Preston is the Natural Father of Stephen Preston and Nicholas Preston.
2. On or about November 24, 2007, a fire started at 2508 N. Woodlawn Drive, Sedalia, Pettis County, Missouri, in which Stephen and Nicholas Preston occupied with their mother, Nicole Ortner. Both Stephen and Nicholas were killed in the fire.
3. Defendant UTC Fire & Security Corporation is a corporation organized under the laws of Delaware. UTC does business in the state Missouri under its subsidy company, Kidde, a corporation organized under the laws of Delaware. Defendant UTC, at all times pertinent herein, has been authorized to transact business in the State of Missouri and maintains a registered agent for service of process with CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.
4. Defendant Kidde is a corporation organized under the laws of Delaware. Kidde is owned by its parent company UTC. Defendant Kidde, at all times pertinent herein, has been authorized to transact business in the State of Missouri and maintains a registered agent for service of process with CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.
5. Defendant Kidde and its parent company UTC design, manufacture, advertise, assemble, distribute, market and sell smoke detectors.

6. Upon information and belief, Defendant Kidde and UTC regularly conduct business in Pettis County, Missouri. Not by limitation, but by means of illustration, the Corporate Defendants' activities in Pettis County include:

- a. Selling products;
- b. Forming and performing contracts;
- c. Servicing and maintaining;
- d. Testing equipment;
- e. Selling replacement parts;
- f. Selling safety equipment;
- g. Advertizing to Pettis County businesses and residents; and
- h. Supplying and transporting products to Pettis County's businesses and residents.

7. Defendant UL is a not-for-profit corporation organized under the laws of Delaware. Defendant UL, at all times pertinent herein, has been authorized to transact business in the State of Missouri and maintains a registered agent for service of process with National Registered Agents, Inc., 300-B East High Street, Jefferson City, MO 65101.

8. Defendant UL is a tester, designer, advertiser, distributor and marketer of smoke detectors.

9. By registering to conduct business in the State of Missouri, Defendants UTC and Kidde have consented to *in personam* jurisdiction in the State.

10. Because Defendants UTC, Kidde and UL have continually and systematically conducted business in the County of Pettis and the State of Missouri, this Court has general, *in personam* jurisdiction over Defendants.

11. Defendants UTC, Kidde and UL have committed a tort within the State of Missouri by designing, manufacturing, advertising, assembling, distributing, marketing and/or selling smoke detectors in a defective, unsafe and unreasonably dangerous.

12. This Court has long-arm jurisdiction over Defendants pursuant to § 506.500.1(1)-(3) R.S.Mo. (2010).

13. Because the injuries complained of herein first occurred in Pettis County, venue is proper pursuant to § 508.010.4 R.S. Mo. (2010).

Facts Common to All Counts

14. The proceeding paragraphs are hereby incorporated by reference as if pled.

15. On or about November 24, 2007, a fire started in the home occupied by Nicole Ortner and Defendant Preston's decedents, Stephen and Nicholas Preston. Said home is located at 2508 N. Woodlawn Dr., Sedalia, Missouri (hereinafter "home").

16. Kidde smoke detectors were installed in the home, and each carried a model number of 0914. Said detectors were functional at the time and place of said fire.

17. Said smoke detectors were battery operated and each and every smoke detector had batteries that were charged and functional at the time and place of said fire.

18. The said smoke detectors were designed, developed, manufactured, assembled, installed, distributed, marketed, sold and/or offered for sale as new by Defendants Kidde and UTC and were in the substantially the same condition as when manufactured.

19. The subject smoke detectors were supplied with only an ionization detection mechanism or device.

COUNT I - NEGLIGENCE **AGAINST DEFENDANTS KIDDE, UTC AND UL**

20. The proceeding paragraphs are hereby incorporated by reference as if pled.

21. Defendants UTC, Kidde and UL owed Defendant Preston and his decedents a duty to

design, manufacture, produce, distribute, market, furnish, and sell a reasonably safe smoke detector.

22. Defendants owed Defendant Preston and his decedents a duty to warn of the dangers conditions associated with use of smoke detectors supplied only with an ionization detection mechanism or device, as such dangers were known or could have been known by Defendants.

23. Defendants breached their aforementioned duties and were careless, negligent, reckless, willful, and/or wanton in one or more of the following acts or omissions, which also rendered the subject smoke detectors defective and unreasonably dangerous:

- a. As designed, manufactured, marketed, sold, distributed, and supplied by defendants, the smoke detectors did not include a dual ionization and photoelectric device or mechanism;
- b. As designed, manufactured, marketed, sold, distributed, and supplied by defendants, the smoke detectors were not reasonably fit, suitable or safe for their intended and represented purpose;
- c. Defendants failed to adequately test the subject smoke detectors
- d. Defendants failed to warn consumers of a known dangerous defect or condition in said smoke detectors, i.e. that said smoke detectors would only detect and/or timely detect certain types of residential fires and would not detect and/or timely detect certain types of fires known to commonly occur in residences.
- e. As designed, manufactured, marketed, sold, distributed, and supplied by defendants, the subject smoke detectors lacked adequate instructions on proper and safe use;
- f. Defendants concealed the known dangers associated with said smoke detectors; and
- g. Defendants failed to recall said smoke detectors, or alternatively, to warn consumers of dangers precipitated by using smoke detectors that contain only ionization detection mechanisms or devices.

24. As a proximate result and consequence of the aforesaid negligence of Defendants, Nicholas and Stephen Preston died.

25. The aforesaid fault of the Defendants directly caused, directly contributed to cause, and/or combined to directly cause physically and emotionally painful and horrific burn

injuries to Nicholas and Stephen Preston, including their impending fear of death, and their eventual wrongful death.

WHEREFORE, Defendant Preston demands judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

COUNT II - STRICT LIABILITY
AGAINST DEFENDANTS KIDDE, UTC AND UL

26. The proceeding paragraphs are hereby incorporated by reference as if pled.

27. The subject smoke detectors were designed, developed, manufactured, assembled, installed, distributed, marketed, sold and/or offered for sale as new products by Defendants Kidde, UTC and UL, and were in substantially the same condition as when manufactured, designed, advertised, marketed and distributed to the decedents.

28. The subject smoke detectors were supplied with only an ionization detection mechanism or device which defendants knew at the time of their manufacture, advertising, marketing and distribution for use by members of the general public in Missouri, including the decedents, would not detect and/or timely detect certain type fires, such as the fire which is the subject of this suit.

29. The subject smoke detectors were defective and unreasonably dangerous, in that the product contained no warnings and/or contained inadequate warnings as to the dangers and risks inherent in their use.

30. The subject smoke detectors were defective, unsafe and unreasonably dangerous for their foreseeable use at the time of their design, manufacture, advertising and

distribution for use by members of the general public of Missouri, including the decedent, in that the said smoke detectors did not contain a dual or combination photoelectric and ionization mechanisms that would detect and/or timely detect all types of house fires, including the type which is the subject of this suit.

31. As a proximate result and consequence of the Defendants' actions, Nicholas and Steven Preston died.

32. The aforesaid fault of the Defendants directly caused, directly contributed to cause, and/or combined to directly cause physically and emotionally painful and horrific burn injuries to Nicholas and Stephen Preston, including their impending fear of death, and their eventual wrongful death.

WHEREFORE, Defendant Preston demands judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

**COUNT III – LOSS OF SERVICES, COMPANIONSHIP, COMFORT,
INSTRUCTION, GUIDANCE, COUNSEL AND TRAINING
AGAINST DEFENDANTS KIDDE SMOKE ALARMS, UTC FIRE & SECURITY
SERVICES CORPORATION AND UNDERWRITERS LABORATORIES INC.**

33. The proceeding paragraphs are hereby incorporated by reference as if pled.


34. As a direct and proximate result of one or more of the defects and/or negligent acts or omissions of defendants, suffered conscious pain and suffering prior to their deaths on November 24, 2007.

35. Harold Preston left surviving decedents as their heirs, has suffered severe pecuniary loss, and loss of services, companionship, comfort, instruction, guidance, counsel, and training, as a direct result of the wrongful death of his sons.

WHEREFORE, Defendant Preston demands judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

Respectfully Submitted,

THE DEFEO LAW FIRM, P.C.



Daniel T. DeFeo MO #35161
Angela G. Cahill MO #52830
Robert E. Gordon MO #61607
924 Main
Lexington, MO 64067
Telephone: (660)259-9806
Facsimile: (660)259-9809
ddefeo@defeolaw.com
acahill@defeolaw.com
rgordon@defeolaw.com

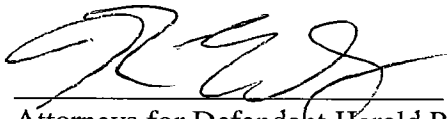
CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing was sent via facsimile, e-mail or mailed, postage prepaid on this 17th day of December, 2010 to:

Adam Graves
911 Main Street
Lexington, MO 64067

UTC Fire & Security Americas Corporation, Inc.
Registered Agent:
CT Corporation System
120 South Central Avenue
Clayton, MO 63105

Kidde-Fenwal, Inc.
Registered Agent:
CT Corporation System
120 South Central Avenue
Clayton, MO 63105

A handwritten signature in black ink, appearing to be 'R. E. S.', written over a horizontal line.

Attorneys for Defendant Harold Preston



IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

120 S. Central

10-SMCC-16916

Return 30

SR

12-18-10

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: UTC FIRE & SECURITY AMERICAS CORPORATION INC

Alias:

CT CORPORATION SYSTEM
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

30
CTCOR

COURT SEAL OF



PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-18-10

Date

Susan Sadler by Julie Bannix
Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.
☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

in St. Louis County, at 120 S. Central Ave., I served a copy of (name) (title) delivering a copy to CT CORP. THE CORP. CO., the registered agent of the defendant, by leaving (address) copy with B. Love, E. King, Moshan (date) at (time).

Served at in (County/City of St. Louis), MO, on (date) at (time).

Printed Name of Sheriff or Server

Jim Buckles

by:

Sheriff, St. Louis County

Signature of Sheriff or Server

Deputy Sheriff

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on (date).

My commission expires:

Date

Notary Public

Sheriff's Fees

Summons \$

Non Est \$

Sheriff's Deputy Salary \$

Supplemental Surcharge \$ 10.00

Mileage \$ (miles @ \$. per mile)

Total \$

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

DEC - 6 2010

St Louis County Sheriff's Office

NOV 22 11:02 AM

Received



IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

105MCC-16975

Return

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238 CT 120 S. Central	<p>12-18-10</p> <p>(Date File Stamp)</p>
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067	
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301	
Nature of Suit: CC Pers Injury-Prod Liab		

Summons in Civil Case

The State of Missouri to: KIDDE-FENWAL INC

Alias:

CT CORPORATION
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

30
CT CORP

COURT SEAL OF



PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-18-10
Date

Susan Daddley by Julie Benice
Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's name over the age of 15 years.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ in _____ County, Missouri, at _____, I served a copy of the within on the defendant named by _____ delivering a copy to CT CORP., THE CORP. CO. the registered agent of the defendant, by leaving a copy with B. Love, E King, Meehan, _____
- Served at _____ in _____ (County/City of St. Louis), Mo, on _____ (date) _____ (time).

Printed Name of Sheriff or Server Jim Buckles

Signature of Sheriff or Server

Must be sworn before a Notary Public if not served by an authorized officer:

Subscribed and sworn to before me on _____ Deputy Sheriff (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary \$ 10.00

Supplemental Surcharge \$ _____

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

FILED
DEC - 6 2010



IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

CT
120 S. Centr.

10-SMCC-16405

Return 3600
Copy
SB
12-3-10

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: KIDDE-FENWAL INC

CT CORPORATION
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

30 OCTOBER

COURT SEAL OF



PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-0-10

Date

Susan Sadler, Circuit Clerk

Clerk

by Cma Lee

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family who is at least 15 years of age.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title) _____ (address) _____ (date) at _____ (time).
- ☐ other _____
- Served at _____
- in _____ (County/City of St. Louis), MO _____

Jim Buckles

Sheriff, St. Louis County

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____

My commission expires: _____

Date

SUSAN SADLER

CLERK CIRCUIT COURT

(Seal)

(Seal)

Sheriff's Fees

Summons	\$	
Non Est	\$	
Sheriff's Deputy Salary	\$	10.00
Supplemental Surcharge	\$	
Mileage	\$	(_____ miles @ \$._____ per mile)
Total	\$	

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

NOV 15 2010

NOV - 9 2010

NOV 19 2010

(date)

Notary Public

St. Louis County
Clerk's Office

NOV - 9 AM 10:02

Received



120 S. Central

IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

10-SMCC-16408

Return 3/00
CopyJB
12-7-10

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: UTC FIRE & SECURITY AMERICAS CORPORATION INC

CT CORPORATION SYSTEM
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 6310530
CTCOR

COURT SEAL OF



PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-08-10

Date

Susan Sadler, Circuit Clerk

Susan Sadler, Circuit Clerk

by Cindi Ross

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 18 years.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____

☐ other _____

I hereby certify that on this date NOV 15 2010,
in St. Louis County, at 120 S. Central Ave., I served
a copy of the within on the defendant named by
delivering a copy to UTC FIRE & SECURITY AMERICAS CORPORATION,
the registered agent of the defendant, by leaving
copy with B. Love, E. King, Meehan, _____ (time).

Served at _____

in _____ (County/City of St. Louis), MO, on _____

Printed Name of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____

My commission expires: _____

Date

Signature of Sheriff or Server

Jim Buckles

Sheriff, St. Louis County

Deputy Sheriff

(date):

Notary Public

(Seal)

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary \$ _____

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

FILED
NOV 19 2010
SUSAN SADLER
CLERK CIRCUIT COURT

NOV 15 2010
9 AM 10:02
RECEIVED




IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: UTC FIRE & SECURITY AMERICAS CORPORATION INC
Alias:

CT CORPORATION SYSTEM
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

COURT SEAL OF

PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-18-10
Date

Copy
Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.

☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☐ other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ (Date) _____ (Notary Public)

Sheriff's Fees

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$ _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.




IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: KIDDE-FENWAL INC
Alias:
CT CORPORATION
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

COURT SEAL OF

PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-18-10 Date Copy Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

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☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☐ other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public _____

Sheriff's Fees

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.




IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: UNDERWRITERS LABORATORIES INC
Alias:
300-B EAST HIGH STREET
JEFFERSON CITY, MO 65101

COURT SEAL OF

PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-18-10
Date

copy
Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

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☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.

☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☐ other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____
Date

Notary Public

Sheriff's Fees

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF PETTIS COUNTY, MISSOURI

STEPHEN KELLY, Individually Surviving and
as Administrator of the Estate of Nicole Ortner,
deceased, and as Natural Father of Nicole Ortner,
Deceased
2791 Oak Ridge Circle
Sedalia, MO 65301
and

CHARLOTTE KELLY, Individually Surviving
and as Natural Mother of Nicole Ortner, Deceased
2791 Oak Ridge Circle
Sedalia, MO 65301
Plaintiffs

vs.

UTC Fire & Security Americas Corporation, Inc.

Registered Agent: CT Corporation System

120 South Central Avenue

Clayton, MO 63105

and

KIDDE-FENWAL, INC.

Registered Agent: CT Corporation System

120 South Central Avenue

Clayton, MO 63105

and

UNDERWRITERS LABORATORIES, INC.

Registered Agent: National Registered Agents, Inc.

300-B East High Street

Jefferson City, MO 65101

and

HAROLD PRESTON,

State Route O

P.O. Box 190

Fulton, MO 65251

Defendants.

FILED
NOV 18 2010
SUSAN SADLER
CLERK CIRCUIT COURT

Case No.: 10PT-CC00238

Division: 4

Plaintiffs Demand Trial by Jury

FIRST AMENDED PETITION

COME NOW Plaintiffs, Stephen and Charlotte Kelly, Individually Surviving, and as Natural Father and Mother of Nicole Ortner; and Stephen Kelly as Administrator of the Estate of Nicole Ortner, Deceased (hereinafter "Plaintiffs"), by and through their attorneys, Langdon &

Emison, and for their cause of action against defendants UTC Fire & Security Americas Corporation, Inc. Corporation (hereinafter "UTC"), Kidde-Fenwal, Inc. (hereinafter "Kidde"), Underwriters Laboratories, Inc, (hereinafter "UL") and Harold Preston, allege as follows:

JURISDICTION AND VENUE

1. On or about November 24, 2007, a fire started in the home occupied by Nicole Ortner and her two minor sons, Stephen and Nicholas Preston located at 2508 N. Woodlawn Dr., Sedalia, Pettis County, Missouri (hereinafter "home or house"). Nicole Ortner and her sons were all killed by the fire.

2. Plaintiffs are adults residing at the addresses in the caption, such addresses being located in the State of Missouri.

3. Plaintiffs Stephen and Charlotte Kelly are the natural father and mother of Nicole Ortner,.

4. Plaintiff Stephen Kelly is the Administrator of the Estate of Nicole Ortner, Deceased, which is styled as *In re: the Estate of Kelly R. Ortner, Deceased*, Case No. 08PT-PR00020.

5. Defendant Harold Preston is a resident of the State of Missouri and can be found at the address stated in the caption.

6. Defendant UTC Fire & Security Corporation is a corporation organized under the laws of Delaware. UTC does business in the state Missouri under its subsidy company, Kidde, a corporation organized under the laws of Delaware. Defendant UTC, at all times pertinent herein, has been authorized to transact business in the State of Missouri and maintains a registered agent for service of process with CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

7. Defendant Kidde is a corporation organized under the laws of Delaware. Kidde is owned by its parent company UTC. Defendant Kidde, at all times pertinent herein, has been authorized to transact business in the State of Missouri and maintains a registered agent for service of process with CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

8. Defendant Kidde and its parent company UTC design, manufacture, advertise, assemble, distribute, market and sell smoke detectors.

9. Upon information and belief, Defendant Kidde and UTC regularly conduct business in Pettis County, Missouri. Not by limitation, but by means of illustration, the Corporate Defendants' activities in Pettis County include:

- a. Selling products;
- b. Forming and performing contracts;
- c. Servicing and maintaining;
- d. Testing equipment;
- e. Selling replacement parts;
- f. Selling safety equipment;
- g. Advertizing to Pettis County businesses and residents; and
- h. Supplying and transporting products to Pettis County's businesses and residents.

10. Defendant UL is a not-for-profit corporation organized under the laws of Delaware. Defendant UL, at all times pertinent herein, has been authorized to transact business in the State of Missouri and maintains a registered agent for service of process with National Registered Agents, Inc., 300-B East High Street, Jefferson City, MO 65101.

11. Defendant UL is a tester, designer, advertiser, distributor and marketer of smoke detectors.

12. By registering to conduct business in the State of Missouri, Defendants UTC and Kidde have consented to *in personam* jurisdiction in the State.

13. Because Defendants UTC, Kidde and UL have continually and systematically conducted business in the County of Pettis and the State of Missouri, this Court has general, *in personam* jurisdiction over Defendants.

14. Plaintiffs allege, *inter alia*, that Defendants UTC, Kidde and UL have committed a tort within the State of Missouri by designing, manufacturing, advertising, assembling, distributing, marketing and/or selling smoke detectors in a defective, unsafe and unreasonably dangerous.

15. This Court has long-arm jurisdiction over Defendants pursuant to § 506.500.1(1)-(3) R.S.Mo. (2010).

16. Because the injuries complained of herein first occurred in Pettis County, venue is proper pursuant to § 508.010.4 R.S. Mo. (2010).

FACTUAL ALLEGAIONS RELATING TO ALL CLAIMS

17. The averments of paragraphs 1 through 16 of this Petition are incorporated herein by reference.

18. On or about November 24, 2007, a fire started in the home occupied by Nicole Ortner and her two minor sons, Stephen and Nicholas Preston located at 2508 N. Woodlawn Dr., Sedalia, Missouri (hereinafter "home"). At said time and place, Nicole Ortner was asleep in the house and unaware of the fire.

defendants, the smoke detectors were not reasonably fit, suitable or safe for their intended and represented purpose;

- c. Defendants failed to adequately test the subject smoke detectors
- d. Defendants failed to warn consumers of a known dangerous defect or condition in said smoke detectors, i.e. that said smoke detectors would only detect and/or timely detect certain types of residential fires and would not detect and/or timely detect certain types of fires known to commonly occur in residences.
- e. As designed, manufactured, marketed, sold, distributed, and supplied by defendants, the subject smoke detectors lacked adequate instructions on proper and safe use;
- f. Defendants concealed the known dangers associated with said smoke detectors; and
- g. Defendants failed to recall said smoke detectors, or alternatively, to warn consumers of dangers precipitated by using smoke detectors that contain only ionization detection mechanisms or devices.

27. As a proximate result and consequence of the aforesaid negligence of Defendants, Nicole Ortner died.

28. The aforesaid fault of the Defendants directly caused, directly contributed to cause, and/or combined to directly cause physically and emotionally painful and horrific burn injuries to Nicole Ortner, including her impending fear of death, and her eventual wrongful death.

WHEREFORE, Plaintiffs demand judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

COUNT II - STRICT LIABILITY
AGAINST DEFENDANTS KIDDE, UTC AND UL

29. The averments of paragraphs 1 through 28 of this Petition are incorporated herein

by reference.

30. The subject smoke detectors were designed, developed, manufactured, assembled, installed, distributed, marketed, sold and/or offered for sale as new products by Defendants Kidde, UTC and UL, and were in substantially the same condition as when manufactured, designed, advertised, marketed and distributed to the decedents.

31. The subject smoke detectors were supplied with only an ionization detection mechanism or device which defendants knew at the time of their manufacture, advertising, marketing and distribution for use by members of the general public in Missouri, including the decedents, would not detect and/or timely detect certain type fires, such as the fire which is the subject of this suit.

32. The subject smoke detectors were defective and unreasonably dangerous, in that the product contained no warnings and/or contained inadequate warnings as to the dangers and risks inherent in their use.

33. The subject smoke detectors were defective, unsafe and unreasonably dangerous for their foreseeable use at the time of their design, manufacture, advertising and distribution for use by members of the general public of Missouri, including the decedent, in that the said smoke detectors did not contain a dual or combination photoelectric and ionization mechanisms that would detect and/or timely detect all types of house fires, including the type which is the subject of this suit.

34. As a proximate result and consequence of the defendants' actions, Nicole Ortner died.

35. The aforesaid fault of the Defendants directly caused, directly contributed to cause, and/or combined to directly cause physically and emotionally painful and horrific burn injuries to Nicole Ortner, including her impending fear of death, and her eventual wrongful

death.

WHEREFORE, Plaintiffs demand judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

COUNT III - NEGLIGENCE
AGAINST DEFENDANT HAROLD PRESTON

36. The averments of paragraphs 1 through 35 of this Petition are incorporated herein by reference.

37. Defendant Harold Preston installed double-keyed deadbolt locks on the front and rear doors of Nicole Ortner's home. Double-keyed locks require a key to release the lock from both inside and outside the door. The aforementioned doors were the only reasonable means of escape for the decedent.

38. By installing the locks, Defendant Harold Preston owed Plaintiffs and the decedent a duty to install locks that allowed for escape in the event of an emergency, and a duty to warn of the dangers associated with use of double-keyed locks, as such dangers were known or could have been known by Defendant.

39. Defendant breached his aforementioned duties and was careless, negligent, reckless, willful, and/or wanton in one or more of the following acts or omissions:

- a. By installing locks that were not easily opened from the interior of the home;
- b. By creating an unnecessary and dangerous obstacle to the decedent's egress from the home;
- c. By failing to warn the decedent of the dangers inherent in using double-keyed locks on exterior doors;
- d. By failing to provide or install an alternate means of escape from the home.

40. As a proximate result and consequence of the aforesaid negligence of Defendant, Nicole Ortner died.

41. The aforesaid fault of the Defendant directly caused, directly contributed to cause, and/or combined to directly cause physically and emotionally painful and horrific burn injuries to Nicole Ortner, including her impending fear of death, and her eventual wrongful death.

WHEREFORE, Plaintiffs demand judgment against Defendant, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

**COUNT IV – LOSS OF SERVICES, COMPANIONSHIP, COMFORT,
INSTRUCTION, GUIDANCE, COUNSEL AND TRAINING
AGAINST ALL DEFENDANTS**

42. The averments of paragraphs 1 through 41 of this Petition are incorporated herein by reference.

43. As a direct and proximate result of one or more of the defects and/or negligent acts or omissions of defendants, Nicole Ortner suffered conscious pain and suffering prior to her death on November 24, 2007.

44. Nicole Ortner left surviving Plaintiffs as her heirs, who have suffered severe pecuniary loss, and loss of services, companionship, comfort, instruction, guidance, counsel, and training, as a direct result of the wrongful death of their daughter.

WHEREFORE, Plaintiffs demand judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE

THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

LANGDON & EMISON

By: 

Adam W. Graves

MO #55190

Robert L. Langdon

MO #23233

LANGDON & EMISON

911 Main Street

PO Box 220

Lexington MO 64067

660/259-6175

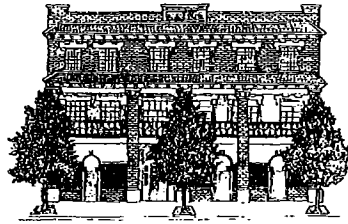
660/259-4571 facsimile

agraves@langdonemison.com

ATTORNEYS FOR PLAINTIFF

Robert L. Langdon
J. Kent Emison

Brett A. Emison
Phyllis A. Norman
Adam W. Graves
David A. Brose
Jessica M. Agnelly



Please reply to:
The Eagle Building
P.O. Box 220
911 Main Street
Lexington, MO 64067
Telephone: (660) 259-6175
Facsimile: (660) 259-4571
www.LangdonEmison.com

LANGDON AND EMISON

Attorneys at Law

November 16, 2010

Delivered via US Mail

Circuit Clerk
Pettis County Courthouse
2nd Floor
415 S. Ohio
Sedalia, Missouri 65301

Re: *Case Number: 10PT-CC00238*
Stephen Kelly, et al v. UTC Fire & Security Americas Corporations, Inc., et al

Dear Clerk:

Enclosed for filing are the originals and multiple copies of the following documents:

1. Civil Filing Information Sheet (previously filed with original Petition – This is a complete version outlining each Defendants' information);
2. Plaintiffs' First Amended Petition

Three Missouri defendants will be served by Sheriff, please issue a summons for each. I have enclosed the following law firm checks:

- ✓ 1. Two separate checks to St. Louis City Sheriff for \$36.00 representing the service fee for Defendant UTC Fire and Security Americas Corporations, Inc., et al and KIDDE-FENWAL, INC.
- ✓ 2. One check to Cole County Sheriff for \$30.00 representing the service fee for Defendant Underwriters Laboratories, Inc.

✓ Please return at least ²one file-stamped copy of the First Amended Petition back to our office. Please find a pre-paid envelope enclosed.

If you should require any additional information, please contact us at 1-800-397-4910.

Sincerely,
LANGDON & EMISON

Laura Mitchell, Paralegal

/lmm
Enclosures

THE DEFELO LAW FIRM, P.C.

CIVIL TRIAL PRACTICE



DANIEL T. DEFEO
ANGELA G. CAHILL †
ROBERT E. GORDON
†ALSO ADMITTED IN KANSAS

December 17, 2010

Ms. Susan Sadler
Circuit Clerk
415 South Ohio
Sedalia, MO 65301

In Re: Kelly v. UTC Fire & Security Americas Corporation, Inc, et al.
Case No. 10PT-CC0238

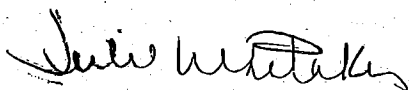
Dear Ms. Sadler:

Enclosed please find the original and one copy of Defendant's Answer, Affirmative Defenses and Cross-Claims of Defendant Harold Preston.

I would appreciate it if you would file this with the Court and return the file-stamped copies to me in the enclosed postage prepaid envelope.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Julie Whitaker
Legal Assistant

Enclosure

MISSOURI
FILED
NOV 15 2010
SUSAN SADLER
CLERK CIRCUIT COURT

Case No.: 10PT-CC0238

Case 2:11-cv-04017-NKL Document 1-3 Filed 01/13/11 Page 36 of 49

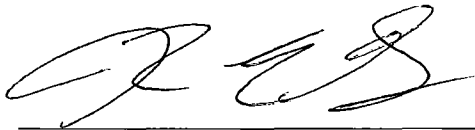
CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing was sent via facsimile, e-mail or mailed, postage prepaid on this 11 day of November 2010 to:

Adam Graves
911 Main Street
Lexington, MO 64067

UTC Fire & Security Americas Corporation, Inc.
Registered Agent:
CT Corporation System
120 South Central Avenue
Clayton, MO 63105

Kidde-Fenwal, Inc.
Registered Agent:
CT Corporation System
120 South Central Avenue
Clayton, MO 63105

A handwritten signature in black ink, appearing to be 'JES', is written over a horizontal line.

Attorneys for Defendant Harold Preston



IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: UTC FIRE & SECURITY AMERICAS CORPORATION INC

CT CORPORATION SYSTEM
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

COURT SEAL OF



PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-08-10

Date

Susan Sadier, Circuit Clerk

Clerk

by Cindy Ross

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

_____ (name) _____ (title).

☐ other _____

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 18TH JUDICIAL CIRCUIT COURT, PETTIS COUNTY, MISSOURI

Judge or Division: ROBERT L. KOFFMAN	Case Number: 10PT-CC00238
Plaintiff/Petitioner: STEPHEN KELLY	Plaintiff's/Petitioner's Attorney/Address ADAM WESLEY GRAVES 911 MAIN STREET P O BOX 220 LEXINGTON, MO 64067
Defendant/Respondent: UTC FIRE & SECURITY AMERICAS CORPORATION INC	Court Address: 415 S. Ohio Sedalia, MO 65301
Nature of Suit: CC Pers Injury-Prod Liab	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: KIDDE-FENWAL INC

CT CORPORATION
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

COURT SEAL OF



PETTIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-08-10

Date

Susan Sadler, Circuit Clerk

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☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

_____ (name) _____ (title).

☐ other _____

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

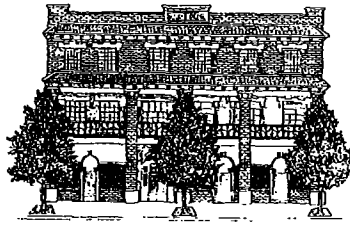
Mileage \$ _____ (_____ miles @ \$. _____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

Robert L. Langdon
J. Kent Emison

Brett A. Emison
Phyllis A. Norman
Adam W. Graves
David A. Brose
Jessica M. Agnelly



Please reply to:
The Eagle Building
P.O. Box 220
911 Main Street
Lexington, MO 64067
Telephone: (660) 259-6175
Facsimile: (660) 259-4571
www.LangdonEmison.com

LANGDON AND EMISON

Attorneys at Law

November 4, 2010

VIA U.S. MAIL

Circuit Clerk
Pettis County Courthouse
2nd Floor
415 S. Ohio
Sedalia, Missouri 65301

Re: New Case Filing: November 4, 2010

Stephen Kelly, et al v. UTC Fire & Security Americas Corporations, Inc., et al

Dear Clerk:

Per your request, I have enclosed a self-addressed stamped envelope for your use in sending the packets for service to the St. Louis County Sheriff in Clayton, Missouri. Per the *Confidential Case Filing Information Sheet* which was filed today along with the Complaint, the two entities to be served by the sheriff's department, UTC Fire & Security Americas Corporation, Inc. and Kidde-Fenwal, Inc., can both be served at CT Corporation in Clayton, MO.

If you should require any additional information or materials, please contact me at 660.259.6175. I thank you in advance for your help.

Regards,

LANGDON & EMISON

A handwritten signature in cursive script that reads "Laura Mitchell".

Laura Mitchell, Paralegal

Enclosures

IN THE CIRCUIT COURT OF PETTIS COUNTY, MISSOURI

FILED
NOV 4 2010

CIRCUIT COURT OF
PETTIS COUNTY, MO

STEPHEN KELLY, Individually Surviving and
as Administrator of the Estate of Nicole Ortner,
deceased, and as Natural Father of Nicole Ortner,
Deceased
2791 Oak Ridge Circle
Sedalia, MO 65301

and

CHARLOTTE KELLY, Individually Surviving and as
Natural Mother of Nicole Ortner, Deceased
2791 Oak Ridge Circle
Sedalia, MO 65301

Plaintiffs

vs.

UTC Fire & Security Americas Corporation, Inc.

Registered Agent:

CT Corporation System
120 South Central Avenue
Clayton, MO 63105

and

KIDDE-FENWAL, INC.

Registered Agent:

CT Corporation System
120 South Central Avenue
Clayton, MO 63105

and

HAROLD PRESTON,

State Route O
P.O. Box 190
Fulton, MO 65251

Defendants.

Case No.: 10PT-CC 00238

Division: 4

Plaintiffs Demand Trial by Jury

PETITION

COME NOW Plaintiffs, Stephen and Charlotte Kelly, Individually Surviving, and as Natural Father and Mother of Nicole Ortner; and Stephen Kelly as Administrator of the Estate of Nicole Ortner, Deceased (hereinafter "Plaintiffs"), by and through their attorneys, Langdon & Emison, and for their cause of action against defendants UTC Fire & Security Americas

Corporation, Inc. Corporation (hereinafter "UTC"), Kidde-Fenwal, Inc. (hereinafter "Kidde"), and Harold Preston, allege as follows:

JURISDICTION AND VENUE

1. On or about November 24, 2007, a fire started in the home occupied by Nicole Ortner and her two minor sons, Stephen and Nicholas Preston located at 2508 N. Woodlawn Dr., Sedalia, Pettis County, Missouri (hereinafter "home or house"). Nicole Ortner and her sons were all killed by the fire.

2. Plaintiffs are adults residing at the addresses in the caption, such addresses being located in the State of Missouri.

3. Plaintiffs Stephen and Charlotte Kelly are the natural father and mother of Nicole Ortner.

4. Plaintiff Stephen Kelly is the Administrator of the Estate of Nicole Ortner, Deceased, which is styled as *In re: the Estate of Kelly R. Ortner, Deceased*, Case No. 08PT-PR00020.

5. Defendant Harold Preston is a resident of the State of Missouri and can be found at the address stated in the caption.

6. Defendant UTC Fire & Security Corporation is a corporation organized under the laws of Delaware. UTC does business in the state Missouri under its subsidy company, Kidde, a corporation organized under the laws of Delaware. Defendant UTC, at all times pertinent herein, has been authorized to transact business in the State of Missouri and maintains a registered agent for service of process with CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

7. Defendant Kidde is a corporation organized under the laws of Delaware. Kidde is owned by its parent company UTC. Defendant Kidde, at all times pertinent herein, has been

authorized to transact business in the State of Missouri and maintains a registered agent for service of process with CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

8. Defendant Kidde and its parent company UTC design, manufacture, advertise, assemble, distribute, market and sell smoke detectors.

9. Upon information and belief, Defendant Kidde and UTC regularly conduct business in Pettis County, Missouri. Not by limitation, but by means of illustration, the Corporate Defendants' activities in Pettis County include:

- a. Selling products;
- b. Forming and performing contracts;
- c. Servicing and maintaining;
- d. Testing equipment;
- e. Selling replacement parts;
- f. Selling safety equipment;
- g. Advertizing to Pettis County businesses and residents; and
- h. Supplying and transporting products to Pettis County's businesses and residents.

10. By registering to conduct business in the State of Missouri, Defendants UTC and Kidde have consented to *in personam* jurisdiction in the State.

11. Because Defendants UTC and Kidde have continually and systematically conducted business in the County of Pettis and the State of Missouri, this Court has general, *in personam* jurisdiction over Defendants.

12. Plaintiffs allege, *inter alia*, that Defendants UTC and Kidde have committed a tort within the State of Missouri by designing, manufacturing, advertising, assembling, distributing, marketing and/or selling smoke detectors in a defective, unsafe and unreasonably dangerous.

13. This Court has long-arm jurisdiction over Defendants pursuant to § 506.500.1(1)-(3) R.S.Mo. (2010).

14. Because the injuries complained of herein first occurred in Pettis County, venue is proper pursuant to § 508.010.4 R.S. Mo. (2010).

FACTUAL ALLEGATIONS RELATING TO ALL CLAIMS

15. The averments of paragraphs 1 through 14 of this Complaint are incorporated herein by reference.

16. On or about November 24, 2007, a fire started in the home occupied by Nicole Ortner and her two minor sons, Stephen and Nicholas Preston located at 2508 N. Woodlawn Dr., Sedalia, Missouri (hereinafter "home"). At said time and place, Nicole Ortner was asleep in the house and unaware of the fire.

17. Kidde smoke detectors were installed in the home, and each carried a model number of 0914. Said detectors were functional at the time and place of said fire.

18. Said smoke detectors were battery operated and each and every smoke detector had batteries that were charged and functional at the time and place of said fire.

19. The said smoke detectors were designed, developed, manufactured, assembled, installed, distributed, marketed, sold and/or offered for sale as new by Defendants Kidde and UTC and were in the substantially the same condition as when manufactured.

20. The subject smoke detectors were supplied with only an ionization detection mechanism or device.

COUNT I - NEGLIGENCE
AGAINST DEFENDANTS KIDDE AND UTC

21. The averments of paragraphs 1 through 20 of this Petition are incorporated herein by reference.

22. Defendants UTC and Kidde owed Plaintiffs and the decedent a duty to design, manufacture, produce, distribute, market, furnish, and sell a reasonably safe smoke detector.

23. Defendants owed Plaintiffs and the decedent a duty to warn of the dangers conditions associated with use of smoke detectors supplied only with an ionization detection mechanism or device, as such dangers were known or could have been known by Defendants.

24. Defendants breached their aforementioned duties and were careless, negligent, reckless, willful, and/or wanton in one or more of the following acts or omissions, which also rendered the subject smoke detectors defective and unreasonably dangerous:

- a. As designed, manufactured, marketed, sold, distributed, and supplied by defendants, the smoke detectors did not include a dual ionization and photoelectric device or mechanism;
- b. As designed, manufactured, marketed, sold, distributed, and supplied by defendants, the smoke detectors were not reasonably fit, suitable or safe for their intended and represented purpose;
- c. Defendants failed to adequately test the subject smoke detectors
- d. Defendants failed to warn consumers of a known dangerous defect or condition in said smoke detectors i.e. that said smoke detectors would only detect and/or timely detect certain types of residential fires and would not detect and/or timely detect certain types of fires known to commonly occur in residences.
- e. As designed, manufactured, marketed, sold, distributed, and supplied by defendants, the subject smoke detectors lacked adequate instructions on proper and safe use;
- f. Defendants concealed the known dangers associated with said smoke detectors; and
- g. Defendants failed to recall said smoke detectors, or alternatively, to warn consumers of dangers precipitated by using smoke detectors that contain

only ionization detection mechanisms or devices.

25. As a proximate result and consequence of the aforesaid negligence of Defendants, Nicole Ortner died.

26. The aforesaid fault of the Defendants directly caused, directly contributed to cause, and/or combined to directly cause physically and emotionally painful and horrific burn injuries to Nicole Ortner, including her impending fear of death, and her eventual wrongful death.

WHEREFORE, Plaintiffs demand judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

COUNT II - STRICT LIABILITY
AGAINST DEFENDANTS KIDDE AND UTC

27. The averments of paragraphs 1 through 26 of this Petition are incorporated herein by reference.

28. The subject smoke detectors were designed, developed, manufactured, assembled, installed, distributed, marketed, sold and/or offered for sale as new products by Defendants Kidde and UTC, and were in substantially the same condition as when manufactured, designed, advertised, marketed and distributed to the decedents.

29. The subject smoke detectors were supplied with only an ionization detection mechanism or device which defendants knew at the time of their manufacture, advertising, marketing and distribution for use by members of the general public in Missouri, including the decedents, would not detect and/or timely detect certain type fires, such as the fire which is the

subject of this suit.

30. The subject smoke detectors were defective and unreasonably dangerous, in that the product contained no warnings and/or contained inadequate warnings as to the dangers and risks inherent in their use.

31. The subject smoke detectors were defective, unsafe and unreasonably dangerous for their foreseeable use at the time of their design, manufacture, advertising and distribution for use by members of the general public of Missouri, including the decedent, in that the said smoke detectors did not contain a dual or combination photoelectric and ionization mechanisms that would detect and/or timely detect all types of house fires, including the type which is the subject of this suit.

32. As a proximate result and consequence of the defendants' actions, Nicole Ortner died.

33. The aforesaid fault of the Defendants directly caused, directly contributed to cause, and/or combined to directly cause physically and emotionally painful and horrific burn injuries to Nicole Ortner, including her impending fear of death, and her eventual wrongful death.

WHEREFORE, Plaintiffs demand judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

COUNT III - NEGLIGENCE
AGAINST DEFENDANT HAROLD PRESTON

34. The averments of paragraphs 1 through 33 of this Petition are incorporated herein by reference.

35. Defendant Harold Preston installed double-keyed deadbolt locks on the front and rear

doors of Nicole Ortner's home. Double-keyed locks require a key to release the lock from both inside and outside the door. The aforementioned doors were the only means of escape for the decedent.

36. By installing the locks, Defendant Harold Preston owed Plaintiffs and the decedent a duty to install locks that allowed for escape in the event of an emergency, and a duty to warn of the dangers associated with use of double-keyed locks, as such dangers were known or could have been known by Defendant.

37. Defendant breached his aforementioned duties and was careless, negligent, reckless, willful, and/or wanton in one or more of the following acts or omissions:

- a. By installing locks that were not easily opened from the interior of the home;
- b. By creating an unnecessary and dangerous obstacle to the decedent's egress from the home;
- c. By failing to warn the decedent of the dangers inherent in using double-keyed locks on exterior doors;
- d. By failing to provide or install an alternate means of escape from the home.

38. As a proximate result and consequence of the aforesaid negligence of Defendant, Nicole Ortner died.

39. The aforesaid fault of the Defendants directly caused, directly contributed to cause, and/or combined to directly cause physically and emotionally painful and horrific burn injuries to Nicole Ortner, including her impending fear of death, and her eventual wrongful death.

WHEREFORE, Plaintiffs demand judgment against Defendant, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a

trial by jury on all issues so triable as a matter of right.

**COUNT IV – LOSS OF SERVICES, COMPANIONSHIP, COMFORT,
INSTRUCTION, GUIDANCE, COUNSEL AND TRAINING
AGAINST ALL DEFENDANTS**

40. The averments of paragraphs 1 through 39 of this Petition are incorporated herein by reference.

41. As a direct and proximate result of one or more of the defects and/or negligent acts or omissions of defendants, Nicole Ortner suffered conscious pain and suffering prior to her death on November 24, 2007.

42. Nicole Ortner left surviving Plaintiffs as her heirs, who has suffered severe pecuniary loss, and loss of services, companionship, comfort, instruction, guidance, counsel, and training, as a direct result of the wrongful death of their daughter.

WHEREFORE, Plaintiffs demand judgment against defendants, jointly and severally, for compensatory damages and costs of this action, in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and for such other and further relief as the Court deems just; and for a trial by jury on all issues so triable as a matter of right.

LANGDON & EMISON

By: _____

Adam W. Graves

MO #55190

Robert L. Langdon

MO #23233

LANGDON & EMISON

911 Main Street

PO Box 220

Lexington MO 64067

660/259-6175

660/259-4571 facsimile

agraves@langdonemison.com

ATTORNEYS FOR PLAINTIFF